

# Regional Policy

*POLICY GUIDE*





# CONTENTS

## **PART 1: ANC REGIONAL POLICY**

Section 1: Introduction	1
Section 2: Relationship between different tiers .....	7
Section 3: Finances and resources .....	10
Section 4: Powers and functions.....	15
Section 5: Managing the transition .....	24

## **PART 2: THE DELIMITATION OF REGIONAL BOUNDARIES**

Background .....	26
Delimitation Criteria .....	27
The Number of Regions .....	31
Boundaries.....	34

## **APPENDICES**

Framework for structure and powers regions.....	38
Map of possible 8 regions.....	42

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## SECTION 1

### INTRODUCTION

#### A Heated Debate

The debate on different levels of government in South Africa, and in particular on the degree to which regions should have autonomy, has become heated. The issues are not only what the powers and boundaries of regional and local government should be, but who decides, how and when.

Usually the debate is presented in terms that are both grossly oversimplified and quite wrong. It is said that the choice before South Africa is between a highly centralised state directing a centrally planned economy, allegedly the ANC position, on the one hand, and a highly de-centralised state with a free economy on the other, said to be the South African government's position on the other. Both positions are misrepresented.

The ANC stands for a united, non-racial and non-sexist, democratic South Africa. This means we want a South Africa that is unified but not over centralised. It must have a constitution which provides for democracy at all levels, popular participation at every level of government,

and a distribution of powers and functions at national, regional and local level which will best achieve this objective, and also ensure development and eradication of inequalities created by apartheid. This can only take place within a national policy framework.

We in the ANC want democracy and development at all levels, and look forward to the private sector making an essential contribution to the nation's well-being. The South African government, on the other hand, is really interested in creating disguised NP-dominated homelands, even if this means wrecking the economy and even if it results in promoting population movements so as to concentrate potential voting support in regions of potential NP hegemony. If this were to happen, the bitterness of the past will re-surface in new forms, and just as Balkanisation is bringing disaster to the Balkans, so would its equivalent in South Africa tear our country apart.

We have no problem with the democratic principle that different parties can hold office at national and regional levels. Any healthy democracy recognises that people in a certain area might prefer the opposition party to the governing party at the national level. What South Africa would not be able to bear would be the creation of mini-states ruled by

ethnically based parties and pulling in different directions.

The terms unitary states and federal states have both been misused. Many unitary states have federal features and many federal states have unitary ones; the Federal Republic of Germany thus has a more centralised state system than the United States of America, despite their different names. Furthermore, in reality, in both those countries in all but a few relatively minor matters, legislation adopted by the national legislature will override laws adopted by the local states.

What matters is the relationship between the different levels of government and how they all connect up in the total constitutional picture.

## **Our Objectives**

The way that government is structured in each country will inevitably depend very much on its history and on what the purposes of government are seen to be. In the case of South Africa, we are involved in the process of knitting together the state again after the nightmarish dismemberments created by apartheid. We are trying to transform an oppressive state built on division and inequality into a democratic one that serves the interests of the whole South African nation.

Our goal is to enable everyone to live freely and with dignity anywhere in

the country, and to create stable and efficient institutions so as to give the best possible chances for the development of democracy, peace and prosperity for all.

The ANC wants to:

- de-racialise our country, so that people can start to think of themselves politically as South Africans holding diverse views, and not as members of this or that racial, ethnic or linguistic group locked into corresponding and definite political compartments;
- progressively integrate, normalise and legitimise the structures of government so that these are no longer seen as instruments of oppression, division and corruption but rather as the means for enabling people to live in tranquillity and get on with and improve their lives;
- discourage political mobilisation on the basis of race, ethnicity or language and especially to prevent state power at any level from being used for purposes of ethnic domination, intolerance and forced removals of populations;
- democratise our land, so that people are as directly involved as possible in shaping their destinies at every level of government;
- minimise the possibilities of abuse

of power which could result from the overconcentration of authority in too few hands;

- reduce and eliminate the massive inequalities established by apartheid, by making resources available for the advancement of those oppressed and kept back in the past by racial discrimination and gender oppression;
- progressively do away with the massive imbalances between regions and between urban and rural areas within regions;
- facilitate the development of an integrated, efficient and internationally competitive national economy; and
- enable people to take pride in their culture and language in a spirit of non-racialism, democracy and respect for the language, culture and beliefs of others.

Healing our country, creating the conditions for economic advance, establishing a climate of peace and tolerance and embarking upon orderly and sustainable programmes to improve the lives of the majority, can only be achieved by means of a national effort undertaken with a sense of national responsibility. We can never succeed if we have a multiplicity of conflicting policies carried out by a multiplicity of feuding bureaucracies.

## Soft Boundaries

Underlying the whole presentation that follows is a concern for three fundamental and inter-related rights: the right to freedom, the right to democracy and the right to development.

The basic issue is not what powers should be reserved for the regions and what powers set aside for the central government. Rather, it is what the relationship between central, regional and local government should be in respect of the national, regional and local dimensions of the tasks that face the whole country.

Thus, education, health, housing, employment, transport and economic development, all have to be conducted both at national and sub-national levels within a single national policy framework. Governmental structures will be so organised such that regions will participate fully in the formulation of policy. The issue is not how to separate out exclusive competence for one level as against the other, but how to ensure appropriate responsibility and accountability at each level, and the harmonious interaction of all levels.

Following from this is the necessity to have soft boundaries rather than hard boundaries in relation to different levels of government. While

we have to be rigid rather than soft on basic constitutional principles such as multi-party democracy, equality and fundamental rights and freedoms, our institutional arrangements should be as flexible as possible so as to enable them to grow and adapt themselves in the light of experience.

Thus, the provision of services should not stop at this or that hard boundary. Nor should responsibility for development be confined to one hard level of government or the other. Civil service, police and development structures should be designed with a view to harmonising and integrating rather than to sealing off and separating their functions.

## **Interrelationship of Checks and Balances**

Finally, the question of timing is important. We are totally against the prescribing of structures and powers of regional and local government in advance of the process of adopting a new constitution. We accept the general principles that there should be national, regional and local levels of government, that each should be democratically elected rather than appointed, and that the constitution should lay down the principles on which they are to be structured. It should go without saying that the general principles of the Bill of Rights enshrining universally recognised fundamental rights and freedoms should apply throughout the

country at all levels of government.

Beyond this, we feel that the determination of regional structures and the spelling out of functions for the regions and local authorities, is something that should be done as part and parcel of the elaboration of the constitution as a whole. Apart from the fact that institutions created by structures that lack democratic legitimacy will themselves lack legitimacy, and hence be vulnerable to future attack, constitutions simply cannot be made in a piecemeal fashion.

The whole concept of checks and balances requires that all the checks and all the balances be known and be in place and interacting with each other at the same time. Certain checks and balances by their very nature cannot be created in isolation from other checks and balances. The new constitution will be an integrated package of interrelated rights, duties, mechanisms and procedures, not an assembly of constitutional spare parts.

Thus, the shape and nature of the regions relates to far more than the simple devolution of power from the centre. It affects the electoral system for the country as a whole (whether to have regional as well as national lists), the composition of the central legislature (there are strong arguments for an upper house based essentially on regional represent-



ation), amendments to the constitution (whether or not a certain percentage of regions have to agree to certain amendments), the role and functioning of state fiscal and monetary institutions (especially in relation to revenue collecting and transfer payments), the structure of the army, police force, and prison service, lines of responsibility and accountability in the public administration, and the structure and functioning of the judiciary.

It is the ANC's view, as articulated at the Policy Conference, that the details of the powers, functions, roles and boundaries of the regions carry such constitutional importance that only a national and democratically elected Constituent Assembly should arrive at any final decision on the matter. The National Party Government, however is of the view that the powers, functions and even the boundaries of future regional government should be settled before a Constituent Assembly is elected. This is clearly undemocratic and unacceptable.

## **The Constituent Assembly Decides**

We might add that there is support for the idea of relatively strong metropolitan government being established in the areas of greater Johannesburg, Cape Town, Durban, Port Elizabeth and possibly elsewhere. It would be unwise indeed to adopt rigid schemes of regional and

local government that pre-empted balanced discussion of the desirability or otherwise of establishing such metros and ensuring that they take their proper place in the total constitutional scheme.

It is expected that, within the framework of clearly enunciated general principles of constitutionalism, democracy and non-racism agreed to in advance, there will be a considerable degree of give and take on all these questions at the Constituent Assembly. This was the experience in Namibia, where the Constitution that emerged after extensive discussion was signed by every single participant at the constitution-making body.

The objective in South Africa will be to draft a constitution that has the assent and support of the overwhelming majority of South Africans with a view to creating a country in which the overwhelming majority feel comfortable and at home.

The question of regional and local government is a difficult one for any country, and particularly for one where apartheid has created so many false boundaries and divisions. The proper time and place for determining the precise structures and powers of government at all levels, is after (and not before) elections have been held; to create a legitimate and widely representative constitution-making body.

## Transitional arrangements

In the meantime, all we are called upon to do is to make suitable transitional arrangements, bearing in mind that there are many honest civil servants whose interests have to be dealt with in a fair and practical way. In this respect, we propose that the four provinces are sufficiently familiar and are sufficiently capacious to provide the basis for progressive re-integration of Bantustans and homelands into the mainstream of South African political and administrative life, pending the adoption of a new Constitution. A powerful argument in favour of this approach is that a infrastructure already exist at provisional level to provide the services and facilities reincorporation of the homelands.

Looking to the future, it is imperative that the ANC spearhead within the broad democratic movement the formulation of clear and concrete proposals on regional and local government for submission at the Constituent Assembly. Let the other groups allow themselves to present the whole question in terms of how best they can cling to power. Our task is to help determine how the new South Africa can be shaped so that our age-old dream of a united, open, prosperous, non-racial, just and democratic society can be realised. After the trauma of apartheid that, and no less, is what our people and the world expect.

### THE RELATIONSHIP BETWEEN THE DIFFERENT TIERS OF GOVERNMENT

In the South African Constitutional debate there is general consensus among the different political actors that a new democratic constitution for South Africa should provide for three tiers of Government - central, regional and local. There is agreement that each level of Government should be democratically elected, with certain specified powers and functions protected by the constitution, where appropriate.

In order to ensure that historical inequalities are redressed, citizens are equally treated and protected by the constitution, where agreed, it is necessary that regional and local government operate within a national framework guided by the same set of democratic principles.

It is often taken as given that decentralisation will bring government closer to the citizenry and as such act as a buffer against an over centralised bureaucracy. However, in practice decentralisation does not always yield the expected democratic and accountable results. This is

one important consideration in stating, therefore, that the autonomy of regional and local government cannot be seen as absolute. For example, in South Africa governing powers were devolved to homelands which are regionally, and often locally based. This, however, has often brought repression - and not government - closer to the people.

Similarly, for purposes of co-ordination and reasonable uniformity in service provision, caution should be expressed against allocating powers and functions exclusively to a single tier of government. Hence the ANC proposes concurrent powers among the three tiers of government with overriding powers reserved for the central government as is the case in Germany. For example, central, regional and local government could play a role in the provision of educational and health services in their respective areas of operations.

In order for regional and local governments to carry out their functions effectively and efficiently they need to have an appropriate combination of political and fiscal powers. In addition, while central government has a role to ensure equitable redistribution of resources from poor to rich regions, it is equally important for sub-national government to co-ordinate development and strive to redress inequalities in their own areas of jurisdiction.

In dealing with the different tiers of government, a number of issues need to be resolved. While South Africa currently has a number of metropolitan areas, it has no metropolitan governments. The ANC views the creation of metropolitan governments in certain parts of the country as essential to the cause of unifying, de-racialising and democratising cities in addition to the more efficient and effective provision of affordable services.

Metropolitan governments, in places like Greater Johannesburg, Cape Town or Durban will necessarily be large, populous and relatively powerful.

The ANC sees metropolitan government as a form of local government, and accordingly located in the third tier - below regional government. The ANC envisages two levels (or tiers) of decision-making and responsibility within a metropolitan government: the metropolitan government itself, and the primary local authorities (or boroughs) within the area of its jurisdiction.

Insofar as the more rural areas are concerned, the ANC envisages the creation of larger geographical forms of local government: district councils. The similarity with metropolitan government lies in the fact that there would be two levels of decision-making, powers and functions within such district councils: that of the

council itself, and that of the (lower-level) village or small town. However, the district council is seen as constituting part of the third tier of government within the overall constitutional framework.

Further attention needs to be paid to the possible form and relationship between the third and first tiers of government.

Finally, it is worth recording the ANC's view that we envisage a significant role for civil society in ensuring that all tiers of government - and the relationship between such tiers - become and remain transparent, sensitive, accountable and democratic. In our conception, civil society embraces diverse bodies such as religious organisations, trade unions, civic associations, professional bodies, student organisations, cultural groups, organisations of the disabled, sporting bodies and the women's movement. They would be independent of the state and their right to exist would not be dependent on the authorisation of the state.

At the same time they could collaborate with the state in securing the objectives of the constitution, particularly in relation to guaranteeing basic freedoms, securing social advancement, healing the divisions of the past and promoting religious, cultural and linguistic rights. Co-operation with the state, however, will not mean co-option by the state

or subordination to it. These bodies must retain their right to criticise state actions, to demand improved performance, and to make proposals for reforms at all levels of government.

Law-making bodies should be required to keep the public adequately informed on all matters affecting the public interest, and to make reasonable provisions for organisations of civil society to be heard in relation to matters affecting the rights and expectations of their constituencies.

## **FINANCE AND RESOURCES**

A critical component of the balance that needs to be drawn between the powers of central, regional and local government within the framework of a national, democratic Constitution lies within the vital role of finance and resources. In this section, the policy document deals with this critical issue, seeking to examine the relationship between political decentralisation and the allocation of fiscal powers and functions between the tiers of government.

### **3.1 Fiscal Decentralisation**

Given the importance of economic considerations and the fact that finance is in many cases the real key to political influence, it is vital that the manner in which the new constitution deals with decentralisation of the fiscal system is coherent, and consistent with the desired structure of political decentralisation

It must be appropriate to modern economic conditions, seeking to enhance democratic accountability while ensuring that the public resources of the country are shared fairly amongst the whole population.

#### **3.1.1 An emphasis on local control**

The starting point should be a strong emphasis upon the need to strengthen local control over the use of public resources. This helps to ensure that usage is efficiently and appropriately tailored to local conditions. The link between paying taxes and receiving public services must be recognised as an important element in the strengthening of democratic accountability, and is most direct at the local level.

#### **3.1.2 The constraints on decentralisation**

However, there are substantial constraints on the extent to which the fiscal system can be decentralised. While these have always existed, they have grown more compelling in recent decades because of the rapid increase in the mobility of goods, people, services and information, and the consequent intensification of the national integration of the South African economy. Policies introduced in one part of the country quickly have impact on other areas.

Fiscal decentralisation must not compromise the capacity for the authorities to exercise sound management over the economy as a whole. A prerequisite, for example, of implementing effective policies to control inflation and unemployment levels is that the autonomy of decentralised government over taxation, spending and borrowing must not clash with effective overall management.

Local and regional governments should be empowered to borrow, for capital expenditure only, subject to the approval of national government and the Reserve Bank in respect of external borrowing; and subject to the authorisation or approval of national government in respect of internal borrowing.

Fiscal decentralisation should guard against allowing too many distortions to be introduced into the economy which prevent resources from flowing to best use. The more taxes differ across different areas, the more the flow of resources across the country will be inefficiently distorted. Allowing regions and local authorities too much power to distort economic conditions in their favour could lead to chaotic results as each authority continually tries to outdo its neighbours. If businesses are to compete effectively, the extent to which regional and local authorities should be allowed to compete must be limited. Linked to this is the need to even the responsibility for redistribution across the country as a whole. Micro and macroeconomic distortions could arise if business and the wealthy in some parts of the country are forced to bear a greater responsibility for dealing with the country's poverty and inequality than in other parts; or if the poor in some areas are treated worse than in others. It would also lead to inefficient and undesirable migration of both the rich and the poor.

The need to place at national level the

key responsibility for effecting and co-ordinating redistribution, is particularly important in South Africa - given the severe spatial imbalance between the location of needs and resources. The level of inequality in the country compromises the extent to which accountability can be based on a direct relationship between payment of taxes and receipt of public services.

Thus, more important even than the call for 'one city one tax base' is the need for 'one country one tax base'.

Balancing the extent of redistribution across the country, limits not only the regional variations which can be permitted in the progressivity of taxation, but also constrains the autonomy which can be given to different regions over how resources are spent. To a large extent it is the nature of the overall package of public goods provided by the authorities which determines the extent of redistribution: for example, spending resources on ensuring good primary education for all has greater redistributive content than subsidising universities.

By the same token, fiscal decentralisation should not compromise the capacity for coherent national policies on urbanisation to be implemented. Allowing regions to compete in making themselves as unattractive as possible to poor incoming migrants in the hope that they will go elsewhere will make coherent urbanisation policies impossible.

### 3.2 Technical constraints on devolving taxes

The nature of most of the significant taxes makes it impossible to give much power to lower tiers of government over how they are levied. For example, given the national integration of the South African economy, allowing VAT to be levied at different rates in different regions would lead to enormous administrative difficulties. Even where it is levied at the same rate, identifying in which region the many firms which operate nationally actually 'add value' would be almost impossible.

For similar reasons company tax can also not be assigned to any particular region or locality; while assigning customs duties to particular regions would be very arbitrary.

Similar difficulties are to be found with income tax; it is often difficult to identify clearly where income is actually earned. Furthermore, where income tax rates are different in different areas, ensuring that people don't register for tax purposes in low tax areas even when they live elsewhere would be a difficult policing task.

The problems of assigning fixed property taxes, such as rates, to a particular area are much less severe, making them much better candidates for devolution to decentralised levels of government. Some excise duties,

such as fuel levies may also hold greater potential for decentralisation.

A distinction needs to be drawn between:-

- assigning particular taxes, such as mining taxes, to the region or local area in which they are supposedly generated, allowing each region to see its own rate; and
- assigning particular taxes, levied at a uniform rate nationally, to a whole level of government. In this case some formulae would be required to ensure that the revenue is shared fairly between the different governments at that level.

In either case, consideration must be given to the way in which changes in economic conditions could interfere unduly in the relationship between different levels of government. For example, over recent years the contribution of mining taxes to the total tax pool in South Africa has declined very significantly, while the contribution of income tax and GST/VAT has risen. Had a particular level of government been dependent mainly on mining taxes, for example, its capacity to perform would have been severely compromised.

### 3.3 The need for fiscal transfers to effect decentralisation

The above arguments make it clear that, as at present, considerable national control needs to be exercised



over the overall fiscal system, and that a large proportion of taxes will inevitably have to be collected at national level. However, to accommodate a more substantial and effective decentralisation of political power than exists at present, better mechanisms will need to be found for transferring resources from the national fiscus to lower levels of government than have existed up till now.

These transfers will fall into two main categories. Firstly, where regional and local government is given responsibility for implementation of national policies, transfers will have conditions attached to ensure that national policies are indeed adhered to in implementation. Thus, within clearly defined nationally determined parameters, decentralised governments would be able to fine-tune the actual pattern of expenditure to suit local needs. The majority of transfers are likely to fall into this category.

Other transfers, however, would have far less stringent conditions attached, and would be aimed at enabling lower tiers of government to implement policies in areas where the constitution gives them powers to act autonomously. These grants would have to take into account the capacity of various lower level governments to raise their own resources so that inequalities amongst regions and localities could be counteracted.

### **3.4 Institutions for managing fiscal transfers and the decentralisation of taxes**

Given that the way in which responsibility and control over the transfers is exercised affects the relationship between different levels of government, it would be unwise to leave such control entirely to central government. On the other hand, trying to fix in the constitution the detail of how transfers are made would tend to be either too vague or too rigid, or both.

The ANC proposes the creation, by means of a statutory act of parliament, a permanent and independent Advisory Commission on Fiscal Decentralisation.

Such a Commission would be structured on a non party-political basis in which certain powers for advising on the structure and mechanism of fiscal decentralisation would be vested. This Commission would be answerable to national parliament as a whole including the chamber in which the regions are represented at national level. Its powers should extend to aspects of transfers between all levels of government.

Its task would be to advise government how best to ensure that the allocation of taxes and transfers to the various levels of government

takes place within guidelines laid down in the constitution. These guidelines must be consistent with the extent of political autonomy decentralised government is to have, and with the Bill of Rights. Such guidelines should ensure that transfers are made in such a way that lower levels of government are able to plan properly; that they are structured so as to enhance efficiency and local accountability and that they are open to clear and effective monitoring. The guidelines must seek, in a transparent and objective manner, to redress inequalities between regions.

The Advisory Commission on Fiscal Desentralisation will advise government on the granting of powers of taxation to lower levels of government within this overall framework. This should be done in a way which enhances accountability and which allows lower levels of government some leeway to raise additional revenue to deal with their own specific problems. Finally, the Fiscal Commission could also play an advisory role in certain areas.

Steps shall be taken to ensure transparency, efficiency and accountability in the expenditure of public funds. To this end, an Independent Fiscal Audit Office will be required and empowered to audit national regional and local government expenditure.

### **3.5 Resources, economic and the structure of decentralisation**

An implication of the above structure of fiscal decentralisation is that because resources are to be collected largely on a national basis, and distributed by means of transfers, drawing boundaries to ensure that each region has similar economic strength becomes relatively unimportant. This opens the way for regional boundaries to be drawn on the basis of a wider range of criteria, including how regional representation can represent the regional diversity of the country at national level for the purpose of national policy making.

## SECTION 4

### POWERS AND FUNCTIONS OF REGIONS

The critical issue in any framework for regional government is the relationship between, on the one hand, regional and central government and, on the other hand, regional and local government. This issue is most sharply raised in the delineation of the powers of the region in regard to the powers of the centre. The proposed legal formulation is set out in the first annexure to this document. The formulation advanced in this proposal establishes that regional government will be empowered to exercise a law-making and executive power in relation to the areas listed in the schedule, provided that regional legislation will have no force where it is repugnant to national laws. Thus, in regard to its legislative and executive powers, the central state shall have concurrent and overriding jurisdiction.

Regional governments shall also have the powers to implement and administer national policy and legislation, when empowered by national legislation to do so. The areas designated as likely areas of regional government are the following:

- (i) The imposition of taxes in accordance with a national policy framework operating within guidelines overseen by the Advisory Commission on Fiscal Decentralisation.
- (ii) Education, other than tertiary education;
- (iii) Health services including hospitals;
- (iv) Welfare;
- (v) Housing;
- (vi) Transport, including harbours, airports and roads;
- (vii) Markets and pounds;
- (viii) Works and undertakings within the region, provided that if works and undertakings extend beyond the regional boundary, such works and undertakings may only be carried out with the consent of the neighbouring region or regions affected thereby;
- (ix) Traffic control;
- (x) The environment;
- (xi) Industrial and other development within the region;
- (xii) Horse racing and gambling;
- (xiii) Town and regional planning;

- (xiv) The imposition of punishment by fine, imprisonment or other sanctions for the contravention of any laws of the region;
- (xv) All other matters delegated to it by Act of Parliament.

This simple formulation requires some further discussion to establish a clearer grasp of exactly what powers the ANC is suggesting that regions will have. It should be mentioned at the outset that, although this formulation favours the central authorities at the expense of the regional authority, it is not out of line with the constitutional devolution of powers in Germany and some other federal states. We may set out the powers of the regions as follows:

## **4.1 Regional Powers**

### **4.1.1 Concurrent and Overriding Jurisdictions**

The regions would be entitled to enact laws dealing with any aspect of the areas listed in the schedule, provided that the provisions of such legislation are not repugnant to national legislation. The central state would thus have concurrent jurisdiction in all these areas.

### **4.1.2 Original Powers**

The powers of the regions would be original in the sense that they would be conferred on the regions by the constitution, not by statute or

government. They may of course be removed, amended or augmented by means of a procedurally proper amendment to the constitution. The central state would not, however, be empowered to enact ordinary legislation which would effectively remove those powers. In other words, the central government may regulate those areas in which regional governments are competent but may not remove the region's right to deal with those issues. It may not, for example, prohibit the regions from building any houses or providing any health facilities.

### **4.1.3 Exclusive Jurisdiction**

In respect of all matters not expressly listed in the schedule the central state will have exclusive jurisdiction to make laws, and to confer the authority and/or establish the agency by means of which such areas of government are administered. Examples of such areas are Foreign Affairs, Defence, Internal Security, Constitutional Affairs and Administration of Justice. The regions will not be able to make policy in these areas at all.

### **4.1.4 Delegated Powers**

The region will be able to administer and implement national policy where empowered to do so by national legislation which may delegate both legislative and executive functions even in respect of non-scheduled matters.

#### **4.1.5 Residual Powers at the Centre**

The regions would not have any residual powers, that is powers to make and implement policy in respect of matters not expressly mentioned in the schedule. The central government would have such powers.

#### **4.1.6 Power to Compel Performance**

The central state can implement national policy within a region - even or especially when a region refuses to implement national policy when legislation authorises the regions to do so. In this proposal central government can, by legislation, compel regions to perform certain functions but would, of course, be limited by practical political considerations in attempting to do so. Provision should be made to allow for central government to assume regional government functions where the region cannot, or refuses to, perform them. This power should be limited to drastic cases of breakdown of regional government. It is envisaged that neither the regions nor the central state would have the power to dissolve regional governments, but regional governments will be responsible to the constitution as well as to the regional electorate.

#### **4.1.7 Multi-level Jurisdiction over Scheduled Matters**

It is clear that in relation to scheduled matters, all three levels of govern-

ment may have legitimate interests and could perform some functions more appropriately than any of the other two levels. Thus, in both Health as well as Education, there may be national policy regarding qualifications, access, and funding. Regional government may be concerned with the location of facilities and the management of resources. Local authorities are the appropriate bodies to regulate and supervise the provision of services by hospitals and schools. Indeed there may be even a 4th level of function, for example, those performed by parents at the level of the educational institution.

It is possible that problems could arise out of this situation. Central and regional government may have the power to build houses. The central government could regulate but not prevent the region from doing so. However, as in the past, these are not insurmountable problems and in the 'old' South Africa there were many examples of such overlapping jurisdiction notably in housing, transport and health.

#### **4.1.8 Local Government**

The ANC proposes that the law dealing with local government be in the form of a national statute. National Parliament should be empowered to adopt a Local Authorities Act which would elaborate their powers and functions, as well as their

relationships to other tiers of government, making suitable amendments when and where necessary.

Outstanding policy matters of detail, such as whether local authorities should operate either under the ultra vires principle, which specifies the exact parameters of local authority jurisdiction (the current system), or be delegated a general competence to perform its functions, will be resolved at a local government policy conference later this year.

In respect of the relationship between local and regional government, it should be noted that the national statutory framework would necessarily limit the powers of regional government in regard to establishing local government policies which are repugnant to the national framework.

Regional government would still be able to pass ordinances in unregulated areas of local government. The regional executive counsellor in charge of local government would inter alia be responsible for ensuring that there was no corruption in local governments or for ensuring that elections were properly held. Such issues may be better dealt with by regional governments than by a central government. Local government powers, on the other hand, could be amended or increased through national legislation.

## **4.2. Functions deemed inappropriate for regional government:**

The technical document presented at the South African Government Conference on Federalism places the administration of justice, law and order, mining, commerce, land and agriculture within the competence of regions. We disagree. These are clearly matters which fall within the ambit of the central government.

### **4.2.1 Administration of Justice, Bill of Rights**

In our view, overall responsibility for the administration of justice, including the establishment and maintenance of regional and supreme courts, rest exclusively with the central government.

We need a nationally integrated system of justice with full re-incorporation of the judicial structures in the TBVC areas. The country cannot afford a multiplicity of legal systems with a multitude of Chief Justices giving different decisions in different parts of the country. Instead, we should maintain the present nationally integrated system, but in a deracialised and representative form while making provision for regional and magisterial sub-divisions.

Of course, the Bill of Rights will have national application and will override any regional laws and govern all acts of regional government. No re-

gional government will be able to override these rights.

#### **4.2.2 Law and Order**

While the ANC endorses the principle that policing should take place in close collaboration with local communities who should assist in establishing the policing priorities for their areas, we do not believe in the establishment of regional police forces, save for the possibility of establishing local traffic police. Autonomous regional police forces create the possibility of private armies, linked to regional or ethnic leaders through patronage and capable of victimising regional outsiders. It is possible to conceptualise a system in which a single national police force is regulated by a statute which requires regional and local government supervision. This, however, is very different to disestablishing the SAP and reconstituting seven, eight or ten police forces. There are other reasons for the maintenance of a central police force - these include the fact that contemporary police forces require a degree of centralised resources and management - particularly in regard to training, the maintenance of centralised information, the combatting of organised crime, maintenance of internal security and the setting of uniform standards and disciplinary codes.

#### **4.2.3**

We must firmly oppose policies which perpetuate or reinforce the

present situation, where we have five armies, 11 police forces, over 15 health and education departments and innumerable ad hoc committees. We are over-governed. Therefore, we should not confuse governance with accountability and democracy. We wish to avoid situations that arise in places such as Nigeria or the United States, where there is a vast, unnecessary and expensive bureaucracy at regional levels. The cost of such structures, alone, is sufficient to render them undesirable.

### **4.3 Fiscal Powers of Regions**

It is clear that both regional and local government must have some powers to raise revenue. The National Party's recent proposals appear to give all power over taxation to the regional level. This is viewed by the ANC as unworkable, particularly in a modern economy such as South Africa.

In our view this matter should be dealt with in the constitution in order to prevent (i) all income accruing to the regions from whom the central state would have to request its apportionment, (the scenario envisaged in the National Party proposal) and (ii) disproportionate revenue raising capacity by richer regions, thereby perpetuating regional disparities. Provision is made for this by the proposed statutory creation of an Advisory Commission on Fiscal Decentralisation (see section 3: Finance and Resources).

Rather than define the diverse sources from which regional government would be entitled to raise its revenue, (e.g., gambling tax and property tax), it may be more appropriate to set out those potential areas of income in respect of which the central state will have the prior or exclusive right to raise revenue. Usually the central state has the sole prerogative on personal income tax, company tax, customs and excise. On the other hand, rates and property taxes are more effectively and appropriately raised by local and regional authorities.

As indicated in this proposal, the central state will have a prior claim on revenue and thus would be able to secure the preponderant proportion of taxes raised and thereby be in a position to equalise the distribution of resources as between regions. The regions would be able to raise additional revenue only after all distributions to the central revenue fund. This would empower the central authority, which will bear the burden of the cost of reconstruction, to set taxes at the levels it deems appropriate and, accordingly, limit the ability of the regions to further increase in tax burdens.

However, it should not be the intention to entirely discourage regions from attempting to raise additional revenue to deal with their particular problems. Although it is envisaged that certain types of taxes - such as the current turnover tax and salary

levies (the Regional Services Councils levy) - would be income which could accrue to the regional governments, it should not be necessary to specify this in the constitution.

#### **4.4. Politics, Accountability and Stability**

It is believed that the formulation of the functions and powers of regional government should be designed to enrich political life through facilitating public participation, transparency and accountability in government at the levels at which it is most appropriate. It should not, however, disempower South Africans by fragmenting their resources and compartmentalising the citizenry's decision-making powers. The ANC is of the view that there is no necessary contradiction between the existence of regions and the project of nation building. It may even be suggested that regional government can enhance national stability and identity, provided that regional boundaries do not necessarily coincide with ethnic, racial, linguistic or other boundaries, and that the regional framework is not designed to perpetuate or create disparities between citizens.

#### **4.5. STRUCTURE OF REGIONS**

##### **4.5.1 Number of Regions**

The question of fixing precise numbers or boundaries of regions is not the function of this policy document,



nor of any single political party. The ANC envisages that this process will be undertaken by a Delimitation Commission after agreement on the basic number and siting of regions has been agreed. Detailed questions, such as the regional location of East Griqualand, would be left to this Commission.

It is the view of the ANC that this entails a process that could and should be utilised to foster understanding, unity, peace and reconstruction rather than conflict. Only a full and thorough process of consultation can adequately inform the debate and the decisions, thus avoiding expedient decisions in the short term.

However, the ANC is of the view that ten is the maximum number of regions into which South Africa should be divided.

#### **4.5.2 Size of Elected Council**

The cost of maintaining regional governments should be taken into account in determining the number of councillors for each region.

#### **4.5.3 Elections by Proportional Representation**

The proposal assumes that the national electoral system will be the proportional representation 'list' system. All the reasons for opting for this system at the national level (viz inclusivity, exact proportionality between representation and support, the

avoidance of conflict over constituency boundaries) would also apply at regional level.

However, in order to strengthen democracy, the ANC favours a mix of representation (direct and indirect) at the regional and local government level, which should have the effect of ensuring that regional policies were responsive to local needs. In the case of local and especially metropolitan government, a mixed system should have the effect of unifying apartheid structures.

#### **4.5.4 Regional Elections and Regional Constitutions should be set out in the Constitution**

In a previous proposal these matters were to be left to a national statute to set out. Some parties at Codesa have argued that they could be left to the regions themselves to formulate or amend as in the USA.

The full framework for the powers and functions of regions should be set out in the National Constitution. The regions will thus have uniform provisions and powers. The situation in South Africa is not analogous to federal states created out of pre-existing autonomous states. At the same time, the democratic functioning of the regions requires protection by its constitutionalisation and thus would not easily be subject to amendments. The regional councils would retain powers to finalise

the details of how they function and their rules of procedure.

#### **4.5.5 Tenure of Councillors/ Period between Elections**

It is proposed that regional elections should not take place at the same time as national elections. By proposing a 4-year term (in contradistinction to the 5 year parliamentary term) such elections will generally take place before or after a general election. This will mean that regional issues will not be lost or submerged by national issues. However, the cost of separate elections must be weighed up against this possible benefit.

#### **4.5.6 Dissolution**

It is proposed that the constitution should provide that the regional councils should not be able to dissolve themselves (so as to frustrate central government) or be dissolved by Parliament (to undermined regional governments). In this proposal the only means by which a regional government will be dissolved is through the expiry of the period of office, or through central government approving the request of a regional government for a regional election. It will be necessary, however, to incorporate within the constitution a provision which will enable the functions of regional government to be assumed by the central government where a regional government will not or cannot discharge its constitutional or statutory obligations.

#### **4.5.7 Size of Regional Executive Council**

It is proposed that the regional executive council be limited to five members in addition to the administrator. Under the old provincial government system the number of executive members was limited to four. In view of the large number of regions and the general expenses and benefits which will flow to REC members, it may be better to limit the number to five.

#### **4.5.8 Administrator**

It is proposed that the administrator be elected by an absolute majority of the regional council. In an earlier proposal of the constitutional committee, and in line with the previous practice, it had been proposed that the Administrator be appointed by Pretoria without regard to his/her acceptability to the council. This practice could well lead to disharmony between different levels of government. While such a system has been proposed in the interim government /constituent assembly stage, we propose that in a final constitution the electoral principle should apply to regional government.

#### **4.5.9 Method of Composition of Regional Executive Council**

It should be noted that the principle of collegiality (i.e. that parties be represented on the executive council

in proportion to their representivity in the council itself) will be argued by the National Party. This system once operated in regard to provincial councils and was abandoned precisely because it entrenched conflict and disharmony. Subject to a reasonable right of access to information for all members of the council, we believe there is no good reason for a proportionally representative regional executive.

The executive council should be appointed by the administrator in consultation with the council. In our view, this system should provide for a more effective executive. The administrator him/her self should be capable of being removed by the council on a vote of no confidence, by a special procedure. In this way the council would have supervisory control over the administrator and his/her executive council.

### MANAGING REGIONAL POLICY IN THE TRANSITION

The important question arises as to how the matter of regional policy should be dealt with between now and the election of the Constituent Assembly - the transitional period.

In order not to pre-empt the deliberations of the Constituent Assembly, the ANC proposes that the four existing and established Provinces with the 1910 boundaries be retained in the interim.

The ANC and the democratic movement in general are firmly committed to a procedure in terms of which a majority of the elected representatives of the people make binding decisions. We are committed to this procedure because we regard the principle of equal liberty - the principle that all adult citizens should have an equal right to participate and determine the outcome of political decision-making processes - as fundamental. Institutionally, this fundamental principle requires the election of a representative body with the power to make laws.

The principle of equal liberty applies

with at least equal force to the process of constitution-making. This is why the ANC is of the firm view that the constitution should be adopted by an elected body with plenary powers to devise a system of constitutional democracy.

A broadly based, democratically elected constituent assembly should, subject to a two-thirds majority and within the framework of agreed general principles of democracy, have the power to choose the form of the future state, including the role, powers, functions and boundaries of regional and local government. This view of the ANC is strengthened if the process which creates the constituent assembly offers fair opportunities for all interests to achieve representation and thereby to seek their objectives within a democratically-elected forum.

This process would also help to ensure that the final decisions to be taken on the system of regional government will occur within a wider constitutional framework. There is an inherent danger in isolating regional government as a separate issue, as though it can be resolved with no due reference to the other tiers of government. Constructing a regional policy in isolation could have very severe and adverse consequences for the future constitution of this country. The future political and economic stability of this country and its citizens require

that we deal with the matter in an open and transparent manner - and that we get it right.

BACKGROUND

Background to the process of delimitation of regions in South Africa. The process of delimitation of regions in South Africa is a complex one, involving a number of stakeholders and a number of steps. The process is currently being undertaken by the Delimitation Commission, which was established in 2002. The Commission's mandate is to delimit the regions of South Africa in a manner that is fair and equitable, taking into account the interests of all South Africans. The Commission's work is guided by the principles of fairness, equity, and transparency. The Commission's process is currently in the final stages, and it is expected that the final delimitation of regions will be completed in the near future.

## PART 2 :THE DELIMITATION OF REGIONAL BOUNDARIES

### Submission to the Delimitation Commission

#### BACKGROUND

Issues relating to the powers, functions, and boundaries of regions in a future South Africa have been under discussion within ANC circles for some time. In February 1992 a discussion document on 'Ten Regions for a United South Africa', produced by the Constitutional Committee, generated a wide debate both inside the ANC and more broadly.

This was followed by a revised draft discussion document on 'ANC Regional Policy', jointly produced by the Constitutional Committee and the Department of Local and Regional Government in October 1992. In this document a 10-region map and a 16-region map were presented as alternatives versions of regional demarcation for a future South Africa.

This draft document on 'ANC Regional Policy' formed the basis of regional workshops culminating in a national conference on regions of the ANC in Johannesburg on 19/20th March 1993. The decision of this conference on the number of regions was that there should be '10 regions or less', and that the four provinces as defined by 1910 boundaries should form the basis of the elections for a Constituent Assembly. In view of the possibility that the 4 provinces

might not be acceptable to other parties, our fall back position would be to define the regions for the elections in terms of the longer vision for regions in a future South Africa. The national conference also decided that the ANC should call for the establishment of a Delimitation Commission, which would make recommendations on regional boundaries for elections to the Transitional Executive Authority (TEC), and which would make recommendations on final boundaries to the Constituent Assembly.

Noting the democratic process followed in arriving at our policy, the ANC respectfully makes its submission to the Delimitation Commission.

## DELIMITATION CRITERIA

In defining future regions for a democratic South Africa, the ANC assumed:

- (i) all bantustans must be reincorporated into South Africa and a united country created. There is a need for active movement away from apartheid, overcoming: the enormous fragmentation and inequalities, the harmful ethnic divisions, and the regional imbalances.
- (ii) there will be provision in the future constitution for three levels of government: central, regional and local;
- (iii) that principles such as the following should guide the process which demarcates the future regions:

- **The regions should be economically and socially functional.** In terms of the former, the regions should be large enough to incorporate those areas which are functionally interdependent with each other, but small enough to ensure coherent planning and administration can occur. Communication links are important here. In terms of the latter, care should be exercised to try and ensure the regions are inclusive of linguistic, ethnic, and other community-related groups so as to give effect

to more appropriate planning for the needs of such groups.

- **The regions should allow for balanced urban and rural development.** This point relates to the fact that the regions should be large enough to include the widely divergent, but contiguous, areas presently existing in South Africa.
- **The regions should be compact.** The gerrymandering in South Africa has reinforced a tendency for regions to be disjointed, elongated, etc. Instead, regions should be as compact as is practicable.
- **The regional boundaries should take into account population size and geographic product.** While this principle is less significant, a strong case may be made for trying to ensure regions are approximately equal in size and geographic product. However, this is very difficult to achieve in practice, particularly as one moves towards more regions.
- **The regional boundaries should, wherever possible, take into account existing boundaries.** While this is the least important principle, there are many reasons why we should be cognizant of existing boundaries.
- **Popular acceptance and a sense of rightness should be taken into**

**account.** While this might be a rather subjective criterion, quite a high degree of national consensus has already been achieved.

Overall, the ANC argued for a multiplicity of regions, without this leading to greater bureaucracy. Areas need to be grouped on an integrative, nonracial basis in a way that encourages accountability, local initiative, efficiency in the provision of services and facilities, and a more equitable distribution of the social surplus.

The ANC's policy conference on regions endorsed that there should be no more than ten regions, with the maximum of ten regions being roughly broken down as follows:

### **1 Western Cape:**

The Western Cape has a total population of about 3,525 million. Just over 60% of the population has been classified under apartheid laws as coloured, just over 20% are white and the remainder are African. The dominant language is Afrikaans although within the Cape metropolitan area a high proportion of English-speakers may be found. Xhosa is increasingly being spoken.

Nodes of activity would include: the Cape Town Functional Region, the Namaqualand region, the Beaufort West area and the George area.

### **2. Northern Cape (including the Western districts of Bophuthatswana):**

The Northern Cape has a total population of 1,465 million. It has a total white population of approximately 8%, an African population of 72% and a Coloured population of 20%. The main languages are Afrikaans and Tswana.

If the 1910 boundaries are followed, then Mmabatho forms part of this region.

Nodes of activity would include: the Kuruman-Vryburg area, Upington and De Aar.

### **3. Orange Free State (including QwaQwa and Thaba Nchu districts of Bophuthatswana):**

The O.F.S. is divided into two regions by the ANC: Northern and Southern Orange Free State. It has a total population of 2,837 million. The total white population for OFS is 13% and 84% of the population is African. The main languages are Sotho and Afrikaans. Xhosa, Zulu and Tswana are also spoken.

If the 1910 boundaries are followed, then Sasolburg will be in the OFS and not in the PWV region.

Nodes of activity would include: Bloemfontein-Botshabelo



in the South and Welkom in the North.

#### 4. **Eastern Cape:**

The Eastern Cape as an economic region is divided into three regions: Eastern Cape, Border and Southern Transkei.

In our 10-region model, we suggested the creation of a separate region for Border-Transkei-Ciskei, with the northern boundary being fixed according to the 1910 frontier between the Cape Province and Natal.

A provisional estimate of the population size for the revised Eastern Cape is approximately 1,42 million, of which Whites constitute 18% and 56% are Africans. The main languages spoken are Afrikaans, English and Xhosa.

Nodes of activity would include: Port Elizabeth-Uitenhage.

#### 5. **Border-Kei (including Ciskei, Transkei and East Griqualand):**

The Border-Kei region consists of the Ciskei, Transkei and East Griqualand areas. The population is approximately 4,717 million with 2% white and 96% African. The overwhelming majority of people living here speak Xhosa, while English and Afrikaans are also spoken.

Nodes of activity would include: East London, Umtata and Aliwal North.

#### 6. **Natal:**

Natal has approximately 7,59 million people, with approximately 80% Africans, 8% Whites and 11% are of Indian origin. The borders here are defined according to the 1910 boundaries. The main languages spoken are Zulu and English.

If regions become important for purposes of representation at a national level, consideration might be given to counting Natal as more than one region.

Nodes of activity would include: the Durban Functional region, Pietermaritzburg, Newcastle, Empangeni, Port Shepstone-Matatiele.

#### 7. **Eastern Transvaal (including Kangwane):**

This region has a total population of approximately 2,029 million. The total White population for the region is 13% and the African population is 86%. The main languages spoken are Swati and Afrikaans. Zulu, Tsonga, Pedi and Ndebele are also spoken.

Nodes of activity would include: Nelspruit and Ermelo.

**8. Northern Transvaal (including Lebowa, Gazankulu, Venda):**

This region has a population of approximately 4,3 million of which 4% are Whites and 96% Africans. The main languages are Pedi, Venda, Tsonga and Afrikaans. This is a heavily populated region with hardly and industrial infrastructure and no major urban areas.

Nodes of activity would include: Pietersburg and Messina.

**9. Pretoria-Witwatersrand-Vereeniging (including Kwandebele and the Odi 1 and Moretele districts of Bophuthatswana):**

This region has a total population of approximately 8,5 million with 36% being Whites and 58% Africans. All the languages of South Africa are spoken here.

If the 1910 boundaries are followed, then Sasolburg will not be in this region but in the OFS.

Nodes of activity would include: Central Rand, West Rand, East Rand, North Rand.

**10. Western Transvaal (including the rest of Bophuthatswana):**

The total population of this region is 1,8 million of which

25% are White and 71% are African. The main languages spoken are Tswana and Afrikaans. Xhosa and Sotho are also spoken.

If, as we propose, the 1910 boundaries are used, then Mmbatho will not form part of this region but will be in the Northern Cape.

Nodes of activity would include: Klerksdorp and Mmabatho.

## THE NUMBER OF REGIONS

At the ANC's policy conference, it was decided that there should be '10 regions or less'. In arriving at a recommendation that there be eight regions, discussions in our regions ensued along the following lines.

- **The Border-Kei/Eastern Cape**

The question as to whether the Border-Kei should be joined to the Eastern Cape required intensive debate. Those supporting such a fusion pointed out that the economic indicators for Border-Kei are such that this region is not economically viable, and would have a problem in terms of the poverty of its industrial and tax base were it to be a separate region.

Those supporting a separate Border-Kei region, on the other hand, have argued that, even if not viable in terms of its tax base, the region is economically functional in relation to the flow of labour, goods and services, and is functional in terms of development planning. They have argued further that responsibility for ensuring the adequate distribution of resources to poorer regions should be a function of central government, and should not have to rely too heavily on their own tax base. Clearly the question of whether these regions should be separated or not is

linked to the question of what powers of taxation are exercised by the regions as opposed to the centre in a future dispensation. (See document on "Criteria for the Demarcation of Regions' for more on this debate.)

Our considered view is that at least for the purposes of elections, there should be a single Eastern Cape-Border-Ciskei-Transkei region.

- **The North-Western Region**

A similar set of arguments exist in considering the Northern Cape and Western Transvaal. Not only are both of these regions quite small, but their separation raises more problems than it contains. These include not only the debates over whether or not Mafekeng should be in the Northern Cape, but the reintegration of Bophuthatswana would be facilitated if most of its regions constitute part of a larger whole. But more importantly, the regions are functionally interlinked. Also the regions are small and through combining them would mean that no region would be smaller than 2 million people in size. One could list a number of economic, social, administration and political reasons for creating a single region.

- **Natal**

There is a general acceptance that

Natal should be a single regional unit, although the question of its southern boundary with the Border-Kei remains unresolved. The ANC position until now has been that the 1910 provincial boundary between the Cape and Natal should be used. This would see East Griqualand- Umzimkulu falling into the Border-Kei. There are arguments, however, to the effect that this area has greater economic linkages with Natal than does towards the present Transkei, and the post-1977 provincial boundary should be used in order that East Griqualand/ Umzimkulu should go to Natal. A possible solution to this issue would be a local referendum among the residents of this area to determine their preference.

- **Orange Free State**

The acceptance of the OFS as a single region, following boundaries as per 1910 form part of our proposal.

- **Pretoria-Witwatersrand-Vereeniging**

The economic dominance of the PWV region has been acknowledged in all our debates. The cutting up of the PWV region would violate all key principles of delimitation and could create more problems than it solves. Our proposal would leave the PWV region intact.

- **Northern Transvaal and Eastern Transvaal**

In our discussions the Northern Transvaal and Eastern Transvaal have always been accepted as distinct regions, although the economic indicators for Northern Transvaal are as bad as those for Border-Kei. Our proposal nevertheless would reflect the predominant view that these should be distinct regions, as combining them does not address the economic functionality needs. While the Northern Transvaal might be economically disadvantaged, it is economically functional and quite distinct from the Eastern Transvaal. In addition, each region is relatively large (both in terms of population and size).

- **Western Cape**

The concept of a Western Cape region has not been questioned, except for the proposal for smaller regions, which would have seen a separate Cape Town metropolitan region, and a Namaqualand region. This proposal was, however, rejected at the national conference, and our proposal to the Commission would contain a single large Western Cape region.

## **Options Facing the ANC**

If the above positions are accepted

the choice facing us as at the present moment is between 8, 9 or 10 regions. If the Eastern Cape is joined to Border-Kei, and the Western Transvaal is joined to Northern Cape, we have an 8 region proposal. If neither of these fusions is followed then we will be back to the 10 region proposal, and if only one is followed then we are looking at 9 regions.

For purposes of the present delimitation, the ANC has proposed eight regions:

Western Cape  
Northwest region: Northern  
Cape/Western Transvaal  
Eastern  
Cape/Border/Ciskei/Transkei  
Natal  
Orange Free State  
Pretoria-Witwatersrand-Vereeniging  
Northern Transvaal  
Eastern Transvaal

At the same time, we must urge that

- the Constituent Assembly should be the vehicle to act on any recommendations in respect of proposed regional delimitations;
- in cases where some of the regions could be combined or in areas where there is some controversy (e.g. Eastern Cape combined with Border-Kei), the actual boundaries should be determined through both a delimitation commission receiving inputs from affected

communities and/or through local referendums.

- there should be a de-linking of the electoral regions for the Constituent Assembly from the possible future regions for a democratic South Africa.

In short, the boundaries of the electoral regions should be flexible until finally adopted by the Constituent Assembly. The Delimitation Commission will need to hear both written and oral evidence from people in areas where boundaries are in dispute.

# BOUNDARIES

## Point of Departure for Boundary Determination: Economic Development Regions

Ideally, what is required for boundary determination is a process involving people at a community level as well as political, economic and social inputs. In addition, data and information which is reliable, valid and representative is required.

Unfortunately, such data are unavailable. The ANC has therefore taken as its point of departure (and because of its close correspondence to the ANC's model) the economic development regions.

### Background

In 1982 nine economic development regions were created to facilitate economic development within South Africa (including the TVBC governments). These regions have been used for planning purposes since then and the Development Bank of South Africa operates with this framework.

The nine regions are:

- A. Western Cape
- B. Northern Cape including the Western districts of Bophuthatswana
- C. Orange Free State including QwaQwa and ThabaNchu district of Bophuthatswana

- D. Eastern Cape and Border including Ciskei and South Western Transkei
- E. Natal including KwaZulu and Northeastern Transkei and Umzimkulu
- F. Eastern Transvaal including Kanguane
- G. Northern Transvaal including Lebowa, Gazankulu, Venda
- H. Pretoria-Witwatersrand-Vereeniging including KwaNdebele and the Odi 1 and Moretele districts of Bophuthatswana
- I. Western Transvaal including the rest of Bophuthatswana

Some of the advantages of such an existing legal framework are:

- it is based on fairly neutral economic criteria and even disregards existing bantustan boundaries.
- it has been used for planning purposes only and so does not have a history of being used to administer apartheid
- it was developed and is used by the South African Government, all

the bantustan structures (TVBC and the self-governing), and the Development Bank of South Africa.

- it is reasonably close to the ANC's regions and has the advantage of being an existing, acceptable legal framework.
- it has largely been accepted by the various state institutions.

Some of the disadvantages would be that:

- the major division of the Transkei into a north and south is fairly arbitrary.
- the precise demarcation of the boundaries has not been researched and affected communities consulted.

Such a demarcation would have the added advantage in that except for the Transkei that no parcel of land presently administered by any of the various bantustan or national governments is split. Rather the mosaic of regions created under apartheid would more properly be reorganized into compact and economically functional regions.

Basic information on the Development regions is provided in the table below.

	Density	Area	Population	%Afr	%Whi	%Col	*Ind.
A	13,47	259573	3522690	16	24	59	1
B	3,8	287346	1077081	61	11	28	1
C	19,47	130213	2515732	84	13	3	1
D	41	168737	6957222	89	5	6	1
E	85	96742	8211257	82	7	1	9
F	27,66	76037	2078979	85	13	1	1
G	38,18	122377	4700814	97	3	1	1
H	274,52	29223	7993801	68	27	3	2
I	28,4	61769	1750019	86	12	2	1

## NOTE:

1. We will hopefully be able to get data soon for the TVBC areas which will allow us to look at indices such as education levels, income, age.
2. The unavailability of data lends further credence to our argument that we cannot determine final boundaries now.

## Boundary Possibilities:

There are a number of problem areas with respect to the existing Development Region boundaries. Our analysis and research suggests the following options must be considered:

### 1. Natal/Eastern Boundary:

Two boundaries suggest themselves:

Option 1: the boundary between Natal and Eastern Cape should revert back to the 1910 boundary. This means that the magisterial districts of Umzimkulu and Mount Currie will become part of the Eastern Cape region.

Option 2: the boundary between Natal and Eastern Cape will follow the existing Natal border and Transkei's region of Umzimkulu will be incorporated into Natal for the purposes of elections.

The African National Congress accepts Option 1, but stresses that a process of meeting local groups who are affected by this decision must be undertaken and a form of local referendum held.

## 2. Western Cape/Northern Cape-Western Transvaal Boundary:

Option 1: the boundary follows the existing development region boundary. This means that the Western Cape will include as its northern and eastern boundaries the magisterial districts of: Namaqualand, Calvinia, Walliston, Fraserburg, Victoria West, Murraysburg, Beaufort West, Prince Albert, Oudtshoorn, Uniondale, Knysna:

Option 2: the boundary is located even further to the north and includes as its northern and eastern boundaries the magisterial districts of : Namaqualand, Kenhardt, Prieska, Hopetown, Phillipstown, Colesberg, Noupoort, Richmond, Murraysburg, Beaufort West, prince Albert, Oudtshoorn, Uniondale, Knysna:

The ANC proposes Option 2 here

as it will make the North-West region more manageable.

## 3. Orange Free State

Some versions of the Development Regions have suggested that the Sasolburg region is part of the PWV. The ANC recommends that the boundary as at 1910 be used for delimitation purposes.

## Boundary Options

Based on this the ANC recommends that the delimitation of the eight regions be as follows:

- A. Western Cape: to be enlarged and include as its northern and eastern boundaries the magisterial districts of Namaqualand, Kenhardt, Prieska, Hopetown, Phillipstown, Colesburg, Noupoort, Richmond, Murraysburg, Beaufort West, Prince Albert, Oudtshoorn, Uniondale, Knysna.
- B. Northern Cape including the Western Districts of Bophuthatswana and Region J Western Transvaal including the rest of Bophuthatswana not within OFS or PWV.
- C. Orange Free State including Qwa-Qwa and ThabaNchu district of Bophuthatswana, following 1910 boundaries.



D. Eastern Cape and Border including Ciskei and Transkei and East Griqualand (following 1910 boundaries).

E. Natal including KwaZulu.

F. Eastern Transvaal including Kanguane.

G. Northern Transvaal including Lebowa, Ganzankulu, Venda.

H. Pretoria-Witwatersrand-Vereeniging including KwaNdebele and the Odi 1 and Moretele districts of Bophuthatswana.

The enclosed map indicates what this would make the proposed regions look like and the following table provides summary statistics (although the census data is unreliable).

Density	Area	Population	%Afr	%Whi	%Col	*Ind.	
A	9,9	368818	3649410	16	24	59	1
B	11,3	239870	2700380	79	12	10	1
C	19,47	130213	2515732	84	13	3	1
D	41	168737	6957222	89	5	6	1
E	85	96742	8211257	82	7	1	9
F	27,66	76037	2078979	85	13	1	1
G	38,18	122377	4700814	97	3	1	1
H	274,52	29223	7993801	68	27	3	2

## **FRAMEWORK FOR STRUCTURE AND POWERS OF REGIONS**

### **1. Regional Boundaries**

There shall be a maximum of 10 regions in South Africa, the names and boundaries of which are set out in schedule . . .

### **2. Regional Councils**

2.1 A regional council shall be elected by ballot for each region.

2.2 Each regional council shall consist of ( x ) members.

2.3 Elections shall be by proportional representation and shall be called and conducted on the basis of a list system in accordance with the provisions set out in schedule . . . - hereto . . .

### **3. Tenure of Regional councils**

A regional council shall be constituted for a period of 4 years from the date on which it was elected and shall not be subject to dissolution save by effluxion of time.

## **4. Executives of Regional Councils**

4.1 The chief executive officer of each region shall be the regional administrator.

4.2 The regional administrator shall be elected by an absolute majority of the regional council at its first meeting. The regional administrator shall hold office for the period for which the regional council has been elected, but shall be liable to be removed from office by a vote of no confidence passed on him or her by the regional council. In that event, a new administrator shall be elected in accordance with the provisions of this article.

4.3 Elections for the regional administrator shall be conducted in accordance with the provisions set out in schedule . . . - hereto . . .

4.4 The regional administrator shall establish departments for the proper administration of the affairs of the region.

4.5 The regional administrator shall appoint an executive committee consisting of not more than 5 persons who shall hold office at the discretion of the regional administrator,

and shall resign if a vote of no confidence is passed on the administrator.

4.6 The regional administrator shall allocate responsibility for the administration of departments to members of the executive committee. A member of the executive committee may be given responsibility for the administration of more than one department.

4.7 The regional administrator shall preside at meetings of the regional executive committee. These shall be convened by the regional administrator.

4.8 If a regional executive committee refuses to carry out its responsibilities as defined in the Constitution or manifests total incapacity to administer the affairs of the region properly, the State President may delegate such functions to a Minister who shall assume such responsibilities for as long as that may be necessary.

## 5. Sessions of Regional Council

5.1 The administrator of a region shall by proclamation in the regional gazette fix the times for holding sessions of the regional council, and may from time to time prorogue such

council: provided that there shall be a session of not less than six weeks at least once in every year, and provided further that a period of more than 1 year shall not intervene between the last sitting of the regional council in one session and its first sitting in the next session.

5.2 The regional administrator shall preside at meetings of the regional council, which shall be conducted in accordance with rules and procedures laid down by the regional council.

## 6. Remuneration

The salaries and allowances of the regional administrators, members of the executive committees of regions, and members of the regional council shall be determined from time to time by the national assembly. The salaries and allowances shall be the same in each region and shall not be reduced during the term of office of the regional councils.

## 7. Powers of Regional Councils

Without derogating in any way from the powers of the National Assembly a regional council shall be entitled to make laws in relation to the following matters:

(i) The imposition of taxes in

accordance with national policy;

- (ii) Education, other than tertiary education;
- (iii) Health services including hospitals;
- (iv) Welfare;
- (v) Housing;
- (vi) Transport including harbours, airports and roads;
- (vii) Markets and pounds;
- (viii) Works and undertakings within the region, provided that if works and undertakings extend beyond the regional boundary, such works and undertakings may only be carried out with the consent of the neighbouring region or regions affected thereby;
- (ix) Traffic control;
- (x) The environment;
- (xi) Industrial and other development within the region;
- (xii) Horse racing and gambling;
- (xiii) Town and regional planning;
- (xiv) The imposition of punishment by fine, imprisonment or other

sanctions for the contravention of any laws made in accordance with the provisions of this section;

- (xv) All other matters delegated to it by Act of Parliament.

## 8. Validity of Laws

Any law made by a regional council in terms of its powers under article 7, shall have effect in and for the region as long and as far as it is not repugnant to any Act of Parliament.

## 9. Assent to Regional Laws

- 9.1 Any law passed by a regional council shall not have the force of law unless and until it has been assented to by the administrator and published in the regional gazette.
- 9.2 The administrator shall assent to any proposed law which has been passed by the regional council unless he or she is of the opinion that it may be repugnant to an Act of Parliament or in conflict with any of the provisions of the constitution. In that event the administrator may refer the proposed law to the constitutional court for its opinion, and shall act thereafter in accordance with the terms of such opinion.

## 10. Language

Regional Councils shall determine which scheduled language or languages may be used within the region for conducting the business of the regional government: provided that any scheduled language may be used for the purpose of addressing written communications to any department of the regional government.

## 11. Local government

- 11.1 Local government bodies shall carry out the functions assigned to them by Act of Parliament.
- 11.2 A regional council may delegate any of its powers or functions to a local authority, and require the local authority to execute such powers and implement such functions on its behalf within the local authority's area of jurisdiction.
- 11.3 If a local authority fails to carry out functions allocated to it by Act of Parliament, the Minister responsible for local government may appoint an officer to discharge such functions for as long as it may be necessary to do so.
- 11.4 If a local authority fails to carry out functions delegated to it by a regional council, the administrator of such council may

appoint an official to discharge such functions for as long as it may be necessary to do so.

## 12. Fiscal Transfers

Fiscal transfers shall be made by the central government to regional councils in an equitable manner, taking into account the population size, backlogs and priorities (such as the urban and rural poor, women and children) of each of the regions.

# **AFRICAN NATIONAL CONGRESS Proposal for 8 regions**

Source: 'Information according to alternative regional demarcations of South Africa' - Development Information Group, DBSA, February 1993.

- A - WESTERN CAPE**
- B - WESTERN TRANSVAAL**
- C - ORANGE FREE STATE**
- D - BORDER**
- E - NATAL**
- F - EASTERN TRANSVAAL**
- G - NORTHERN TRANSVAAL**
- H - PWV AREA**





